THE MARUMAKKATHAYOM MARRIAGE BILL.

Mr. Thanu Pillai.—

I beg to move for leave to introduce a Bill relating to marriages among the followers of the Marumakkathayom law. The Bill, as you will have observed from the copy already circulated, is a simple measure. It does not introduce any material change in the existing matrimonial usage, but seeks merely to formulate and declare such usage and to provide a means of preserving the evidence of dissolution of the union in view chiefly to minimize litigation. The object of the proposed measure is, as briefly indicated in the statement of Objects and Reasons, to remove doubts which have been raised as to the legal validity of the marriage among the Marumakkathayom Hindus. The peculiar system of inheritance which obtains among this community has given rise to serious misconceptions regarding their matrimonial relations and their law of marriage has, as observed by Mr. Logan, who was for years Collector and Magistrate of Malabar and who acted for a time as Resident of Travancore and Cochin, "in the hands of unenquiring commentators brought much undeserved obloquy on the morality of the people. The fact, at any rate, of recent years, is that, although the theory of the law sanctions freedom in their (marital) relations, conjugal fidelity is very general. Nowhere is the marriage tie, albeit informal, more rigidly observed or respected, nowhere is it more jealously guarded or its neglect more savagely avenged. The absence of ceremonial has encouraged the popular impression; but ceremonial like other conventionalities is an accident, and Nair women are as chaste and faithful as their neighbours." The unenquiring commentators Mr. Logan refers to are no doubt the European travellers and writers whose ignorance of the language of the country and the shortness of their sojourn led them to make, no doubt unwittingly, incorrect statements regarding our marital relations. These inaccurate notions have strangely enough found acceptance with the administrators of law and, in consequence, the protection which is accorded to the Pulayas and other so-called degraded castes is denied to a community which in point of education, general intelligence and manliness is not inferior to any other community in India.

The Matriarchal system of inheritance which was probably coeval with the system of marriage adopted by the Marumakkathayees and which had its origin in the state of society, the genius of the Government, the amount of cultivated and cultivable land and other causes, has been made the effect of uncertainty of parentage. Even jurists like Sir H. Maine and Sir Fitz James Stephen have lent themselves to this error. The theory of the old anthropologists that descent through females indicates promiscuous intercourse and uncertainty of parentage has been shown by writers like Professor Westermarck to be unfounded. Among the Thibetans, the Todas, the Ainos of Japan and other races who practise polyandry and have hardly any settled system of marriage, the inheritance is through males and *not* females. "There is no general coincidence" says Westermarck "of what we consider moral and immoral habits with the prevalence of male or female line among existing races." Mr. Logan says: "Many fanciful reasons are assigned for this custom; but there can be little doubt, the custom was adopted to prevent alienation of property, as the earliest foreign observer Sheik Zin-ud-din himself sets forth. The custom had also much to commend itself in a society organized as it then was, when the Nairs were the 'protectors' of the state and could seldom, except in old age, settle down to manage their family affairs." Be the origin what it may, it is a blunder to connect the system of descent through females with the system of marriage in Kerala.

The determination of the question whether the conjugal relation subsisting among Marumakkathayees amounts to valid marriage must be made to depend solely on a consideration of what the essentials of a marriage are as distinguished from its accidentals.

Marriage in its essence is a civil contract between a man and a woman by which they agree to cohabit as husband and wife, or as Holland puts it, "a mutual and voluntary conveyance or dedication of the one to the other." The ceremonies attending the marriage, its duration and the civil rights attaching to it are mere accidents.

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As regards ceremonies, we find a great variety among several nations, and among some none whatever. According to Scotch law, the deliberate exchange of matrimonial consent by words *de praesenti* constitutes a valid marriage (Mackenzie's Roman Law p. 111). Lord Moncrieff, a great authority on consistorial questions, says of Scotch marriage, "The governing rule of law is unquestionably that "marriage is constituted by consent of the parties alone; and that on legal and "satisfactory evidence that such mutual consent has been seriously and deliberately "interposed, the court will declare such marriages valid, though it should be clear "that no formal ceremony or celebration has taken place." In England, in cases where marriage is celebrated before a Registrar, the mutual declaration and exchange of matrimonial consent complete the marriage contract and no religious ceremony is needed. Gretna Green marriages which required no ceremony were until recently quite common even among Englishmen. Under the Roman Law *concensus facit matrimonium*—consent constitutes marriage. Ceremonies were considered essential in the marriage known as *conferratio*; but in the marriages without *manus*, which gradually became universal in Rome, no ceremony was necessary (Mackenzie p. 99.) By the marriage law of Europe in general, "marriage "could be contracted by a contract *per verba de praesenti* without any religious "ceremony whatever and in particular without the presence or intervention of any "priest or minister of religion." (Sir Fitz James Stephen's speech before the Vice-regal Legislative Council.) In Budhistic countries marriage is a purely civil contract and no religious ceremonies are needed. The same was the case among the Hebrews and there is no trace of priestly consecration either in the Scriptures or in the Talmud. Among Mahomedans, marriage is merely a civil contract and no religious ceremony is required. In Japan the ceremony consists in drinking a fixed number of cups of wine. In Croatia in Austria, the bridegroom boxes the wife's ears. In Assam, the interchange of the pan leaf constitutes marriage. Among the Sonthals, painting the bride's brow with vermilion and eating the common meal constitute the ceremony. Among the Kurmis the couple mark each other with blood drawn from their little fingers. The Veddahs of Ceylon inverse the Hindu custom, and the bride ties a thin cord of her own twisting around the bridegroom's waist.

Instances may be multiplied, but those noticed above sufficiently show that neither a sacrament nor any particular ceremony is essential to a valid marriage. As observed by Sir Fitz James Stephen "the good faith and the intention of the parties and not the form in which a marriage is celebrated is the test of its validity."

"If the deliberate opinion of great bodies of men" to quote the same high authority "expressed by their laws is to be taken as an exponent of justice, equity and good conscience—and I know of no better—this would appear to be the teaching of justice, equity and good conscience upon the point in question."

Like ceremony, permanence, however desirable, cannot be said to be an essence of marriage. According to the Hindu ideal marriage is absolutely indissoluble so far as the woman is concerned. Christianity is less austere, but more just to the female. It allows dissolution of the marriage tie under certain circumstances. In England any husband may obtain a dissolution of his marriage upon proving that his wife has been guilty of adultery; and any wife may obtain a dissolution who can prove that her husband has been guilty of incestuous adultery or of bigamy with adultery, or of rape, or of sodomy, or bestiality, or of adultery coupled with cruelty, or of desertion without reasonable excuse for two years. (20 and 21 Vic. c. 85.) Under the Code Napoleon, marriage may be dissolved on grounds of adultery, outrageous conduct, ill-usage or grievous injuries exercised by one of them towards the other, the condemnation of one of the parties to an infamous punishment, and on the mutual and unwavering consent of the married parties expressed in the manner prescribed by law. Among Mahomedans the relation may be determined by either party at will. The Roman Law permitted divorce by mutual consent and even at the will of either party. Even to the Hindu Law, divorce was not unknown. Parasara says "If the husband be missing, or dead, or retired from the world, or impotent, or degraded, in these five calamities a woman may take another husband."

I have already observed that civil right of inheritance is not a necessary incident of marriage. The variations and shades of differences even among the peoples who have adopted the patriarchal system of inheritance point to this conclusion. Among some people—the Hindus for instance—

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daughters are excluded from inheritance when there are sons. The law of Moses gave the eldest son a double portion and excluded the daughters entirely from inheritance. The Mahomedan law gives a determinate share (half the son's portion) to daughters. The law of the Twelve Tables admitted equally males and females to the succession. This is the rule generally followed in America. The same law is applied in respect of moveables in Scotland. In Denmark a moiety of the estate goes to the eldest son and the other moiety is distributed among the remaining children—males and females. The right of primogeniture among males is the established rule of descent in England. Under the system called "Borough-English" the youngest son succeeds to the entire estate. Under the English law illegitimate children cannot take by descent, but in some States in America such children are allowed to inherit. Under the Roman law illegitimate children could take a portion of the father's estate. The Code Napoleon follows this rule. In Holland bastards inherit from the mother. The issue of the morganatic marriages of the princes and nobles of the continent of Europe get neither the title nor the property of their father. Among the ancient Egyptians illegitimate children had as much right to the property of the father as the offspring of a legal marriage. The same custom now prevails in China and Japan where the children of a concubine have the same legal rights as the children of the wife (Westermarck pp. 431 and 32). Among the Mahomedans the children even of a female slave get equal rights with the children of the legally married wife. Even the Hindu law recognizes the right of inheritance of a Dâsiputra. Among the Malayalee Brahmins of the Payanûr Gramom in Malabar, not the sons, but the sister's sons inherit. Thus we see that along with strict marriage there exists the entire exclusion from inheritance of all daughters, of all daughters and sons except the first or last, and of *all* children. There is also inheritance without marriage as in the case of illegitimate children.

I have dwelt at this length on these points because they form the stock arguments in favor of the notion that the institution of marriage does not exist among Marumakkathayees. Whether from ignorance or prejudice our critics seem to have no qualms of conscience in levelling against us the reproach: "Your wives are concubines and your sons are bastards."

The creation of the matrimonial status among Marumakkathayees is always accompanied by some recognized ceremony. I shall give a brief account of the ceremony as observed in South Travancore. When a boy attains the marriageable age, his guardian (generally the father) sets about to find a proper and suitable bride. After having in consultation with his friends and relations fixed upon a girl and satisfied himself as to her birth, respectability &c. &c. he obtains from the bride's father or Karanaven a copy of her horoscope. An astrologer is consulted and on his assurance that the horoscopes of the bride and bridegroom elect agree, an auspicious day is fixed for the formal receipt of the horoscope. On the appointed day the bridegroom's father, uncle and some other relations and friends go to the bride's house, where they are formally received by the bride's father, uncle and other relations and friends. The bride's horoscope is handed over by the bride's father or Karanaven to the bridegroom's father or Karanaven. The right of giving and receiving the horoscope is generally exercised by the father unless the Karanaven happens to be the older of the two in which case he is accorded the privilege in deference to his age. The ceremony closes with a feast. A day is then fixed by the bridegroom's party in consultation with an astrologer and a formal intimation in writing of the auspicious day is sent to the bride's people. Invitations are then issued by both parties to their respective friends and relations. On the appointed day shortly before the time fixed for the ceremony, the friends and relations of the bridegroom meet in the latter's house and they all go to the bride's house in a sort of procession. The bride's people and their relations and friends formally welcome the bridegroom's party at the gate and seat them in an important part of the house. A portion of the Ramayana or other sacred book is then read and explained by some person, generally the Asan or village schoolmaster. Some music is also occasionally provided for the delectation of the assembled guests. When the auspicious hour arrives, the bridegroom proceeds to the Arapura—the most important apartment in the house—accompanied by his relations and friends. There a seat is specially provided for the bridegroom. The seat generally consists of a plank or a low bench draped with white cloth. If the bridegroom belongs to a family of some distinction, a black blanket is also spread over the white cloth. On either side of

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the seat but a little to the front a lamp and a നാഴി or measure filled with paddy and decorated with flowers are placed. The bridegroom makes obeisance to his father, Karanaven and other elders present, distributes *dekshanai* (presents) to a few Brahmins and instals himself in the orthodox fashion on the appointed seat. One of his kinsmen (known as Machampis) sits by him with the cloths to be presented to the bride—the cloths being folded, wrapped in silk and placed on a plate. Meanwhile the bride makes obeisance to her mother and other female relations, distributes *dekshanai* to Brahmins, and is conducted to the bridegroom's presence by a female relation. The bridegroom's Machampi then hands the plate containing the bridal dress to the bridegroom who presents it to the bride. The girl makes a low bow and receives the dress. While this is being done the ladies assembled raise the customary applause called കൈ. The guests are then treated to a sumptuous feast. The bride is generally taken to the bridegroom's house the same night in procession and the party entertained at a similar banquet.

The above is an accurate description of the cloth-giving ceremony in South Travancore. There may be local variations in other parts, but the main features are the same throughout Travancore. The union is intended to be permanent and is, in the vast majority of cases, practically so. Though there is no civil right in theory, every father feels it his duty to make some provision, according to his means, for his wife and children.

The report of the Malabar Marriage Commission shows that the same essential features exist in Malabar. Some of the members of the Commission seem to entertain doubts as to the legal validity of the social marriage among the Marumakkathayees in Malabar. But even these gentlemen are forced to admit that "they (i. e. the "followers of the Marumakkathayom law) are all or nearly all of them better than "their custom and the majority cleave to one woman for life." The Commission, or rather those gentlemen who have signed the report and who, by the way, actuated no doubt, by a laudable desire to introduce a marked reform, were by no means disposed to take a rose-colored view of the existing state of things, observe further ".....happily it is beyond dispute that the Marumakkathayom Hindus in practice follow a higher and better way of life than that which is supposed to regulate their domestic rights and duties. So strongly has the natural feeling in favor of wife and children become developed that in North Malabar one stock objection to a marriage law was that the people did not want what they had already got. According to the North Malabar witnesses the rule is that the union of a man and woman lasts for life. The wife lives with the husband. Divorces are almost unheard of, or are extremely rare. Respectable people set their faces against polygamy. The father is *de facto* the guardian of his wife and children and educates the latter. In the absence of testamentary power, men, where they have the means, invariably make provision for their wives and children by gifts *inter vivos* and if they were to die before having made such provision their Tarwads would be forced by public opinion to make the widow and orphans an adequate allowance."

In the above extract substitute Travancore for North Malabar and we get a correct picture of the state of things in this country.

The late Sir Justice Muthuswamy Aiyer, (the President of the Commission) after describing the various forms of marriage adopted by Malayâlees says: "The intention to create the relation of husband and wife is, as recognized by society, common to them all and the couple that go through those forms are afterwards known as husband and wife" and he goes on "it only remains for me to add that the union constituted by them all lasts at present for life in the majority of cases." He further observes "the husband or the wife may in theory divorce the other at will. But in practice neither does so except for a cause which commends itself to his or her family and to the society in which they move. Arbitrary divorces appear to be rare ....." Again, "It is clear that in the course of social progress the majority of the Marumakkathayom Hindus have engrafted forms of marriage in their ancient practice, that these forms are resorted to as overt acts whereby the intention to marry is manifested, and that the sexual relation thus constituted in the majority of cases endures for life."

Mr. Chandu Menon (Sub Judge), one of the Commissioners, observes: "The great mass of evidence taken before us supports the view, that Nairs have a system

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of marriage recognized by custom." Again he says "as to whether our present marriage system deserves to be recognized by law as a valid and binding system, I think there cannot be two opinions. I ask that when the Courts find that the allegations of the existence of promiscuous intercourse and laxity of morals and want of marriage system &c. in Malabar are all absurdly unfounded, that when they find that the community of Nairs and Tiers, that is to say, the respectable and a very large majority of it, observe the marriage law, as strictly as any other nation in the world, when the Courts find these facts to be true, would not they hold, according to good conscience and equity, that we are entitled to the protection of the Penal and Civil laws which protect other Hindu subjects of Her Majesty the Queen Empress in the enjoyment of their Matrimonial rights." These quotations may well be capped by the following observations of the Madras Government (vide letter to the Secretary to the Government of India, Home Department dated 26th Septemper 1892, No. 54 Legislative) :—"It appears to Government that the case may be briefly stated as follows :—The classes governed by the Marumakkathayom law form sexual connections which are, at the time of commencing them, intended to be permanent until the death of either of the parties and which in the great majority of cases are so; these connections are publicly formed and socially recognized and are accompanied by ceremonies of a characteristic kind which have nothing in them of a religious element but which otherwise are as much marriage ceremonies and entitled to the same respect as marriage ceremonies elsewhere."

The observations and inferences indicated above apply with redoubled force to the Marumakkathayom Hindus of Travancore. Here, owing to greater and longer contact with the Tamilians and the lesser influence of the Nambudries, the Marumakkathayom system has long since lost its peculiar pristine rigour. Partition of the tarawad property among *tavalies* or branches is the rule in Travancore, particularly in the southern half of it, while it is the exception in Malabar. Marriage outside the same caste sub-division is rare in Travancore, while in Malabar what is called the Pratiloma marriage, that is, marriage of a woman with a man of an inferior caste or sub-division of caste is alone prohibited. In Travancore—at all events in most parts—the sons have to perform *sradha* and observe *deeksha* for the father. The wife and children also observe pollution. In some parts of Travancore again the father's name and not the Karanaven's is used as the second name (ഇട പേര്) in describing the *full* name of the individual. The wife is invariably taken to the husband's house, lives and messes with him and is not at liberty to leave his house even to visit her own relations without her husband's permission. In Travancore, Government have in various ways recognized the validity of the conjugal union among Nairs. In the matter of adoption, if a man adopts a stranger he has to pay to Government as adiyara or fee a moiety of his property; but if the person taken in adoption is son or daughter the adiyara fee is only one-third. Again the wives and children of officers and others who have rendered valuable services to the State are occasionally given state pensions and allowances. Grants of money and other allowances are given as a mark of Royal favor to some high officers of state on occasions of wedding of their daughters, and in this respect no distinction is observed between Makkathayee and Marumakkathayee classes. If one would cast off all prejudices and preconceived notions and impartially and dispassionately investigate the subject he will find that the conjugal union known as Sambandhom, Pudavakoda, or by other local name is not a casual or fugitive connection formed for the purpose of sexual gratification, but a serious and solemn alliance, and that the intention of the parties is to make the union a life-long one. The term commonly used for husband viz. Gunathozhakaren, which means one who is taken 'for better for worse', shows that he is anything but a 'casual visitor.' Doubtless, as observed by Justice Muthuswamy Aiyer, the relation may, in theory, be determined at the will of either party, but in practice the dissolution is rare and perhaps not more common than even among some of the advanced nations of Europe and America. I admit there are particular instances of great laxity—especially in towns. But is such laxity peculiar to Marumakkathayees? Are there not professional prostitutes among all civilized nations? Are there not customs which are perfectly legal in one nation, but which are regarded by other nations as immoral and even sinful? Polygamy is immorality according to Christian notions, but it is sanctioned by the Hindu sages and practised by the most advanced classes in India. Infant marriage is in the eye of an

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Englishman a barbarous practice, but it is almost the universal rule in India. The Levirate law among the Hebrews made it the duty of the brother of the deceased or the nearest male relation to marry the widow, to give to the first-born son the name of the deceased kinsman, to enter his name in the genealogical register and to deliver into his possession the estate of the deceased. The practice of Niyoga, sanctioned by the Hindu Sastras, gives a brother or other near kinsman or on failure of such any member of the highest caste, power to beget a son and heir to one either deceased without leaving male issue, or alive but incapable of begetting male issue. As observed by the Honorable Mr. Crole in his speech in the Madras Legislative Council, "The modern so-called Personal law (of Hindus) exhibits equally interesting idiosyncrasies; it includes Kulinism in Bengal, it includes in the coast towns of Bombay and North-west India, polyandry, where a man marries his infant son to a grown up girl, he cohabits with her, raises children from her for his son, and when the son attains the age of maturity he finds his wife an old woman, so he marries the progeny which has been raised by his father to another grown-up girl, and cohabits with her in the same fashion." Let no one fancy, that 'whatever is off the hinges of (his) custom is off the hinges of reason.'

"That there exists (in Europe) by the side of regular marriage a considerable margin, in which are still found nearly all the other forms of sexual association, we do not deny" writes Ch. Letourneau who has made a scientific study of the history of human marriages. In the concluding chapter of his valuable work on the Evolution of Marriage he gives some interesting statistics which show that no inconsiderable number of children born in Europe are illegitimate and that divorces and free unions are far from rare. Can any body deny that there exists in Europe a very strict system of marriage? A community should be judged by its Sadacharom or good usage, or, I would say, the usage of the good men that compose it, and not by the practices of the waifs and strays in it.

The foregoing considerations lead but to one conclusion, viz., that the existing social marriage among the Marumakkathayom Hindus is in all essential respects a good and valid marriage. Marriage with many people is the association of a master and a slave or of a master and several slaves; while the Marumakkathayom marriage is the union of two persons on a footing of equality—a union by affection. "A time will come" says Mr. Herbert Spencer "when union by affection will be considered the most important.....and men will hold in reprobation those conjugal unions in which union by affection is dissolved."

It may be asked, if this view, viz. that there is a good and valid marriage among the Marumakkathayees, is correct, what is the necessity for this Bill? Why not let well alone? I cannot better answer these questions than in the weighty words of the Madras Government in their letter to the Government of India already quoted. The Government observe "His Excellency in Council considers that marriages performed under the Marumakkathayom law are entitled to legal recognition and protection and that the mere statement of the case as above is sufficient to show the propriety of legislating on the subject. The courts have hitherto refused to recognize these social marriages in Malabar as legal marriages and it will be observed from para 15 of his memorandum that the President (Sir Muthuswamy Aiyer) is of opinion that such recognition is not likely to be accorded in future.....His Excellency the Governor in Council is in favor of legislation as the only method of protecting the growth of an important and desirable social change and of counteracting the tendencies of the Courts of law to a too restricted conservatism." In reply to the above letter of the Madras Government, the Government of India observed "They (i. e. the Government of India) entirely agree with the Government of Madras that legislation should be resorted to in order to give such (i. e. legal) effect to what is already recognized as a marriage in society among the classes concerned." The best evidence of the existence of a valid custom is its judicial recognition. There is so far as I know no decision of the Travancore High Court recognizing or refusing to recognize the legal validity of the social marriage among the Marumakkathayom Hindus of Travancore. But as our Courts generally follow the spirit of the decisions of the British Indian High Courts, it is extremely unlikely that they would take a different view of the question. Mr. Justice Kunhi Ramen Nair writes: "Such unions (i. e. Malayalee marriages) had at one time been recognized by the Malabar Courts as marriage, the offences relating to which are punishable under Chapter 20 of the

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Penal Code; but a different view has for some time prevailed in the Madras High Court and the doubts thrown on the legality of such union by the views expressed by eminent Judges of the Madras High Court are likely to be shared by our Courts too. The existing conjugal union among the Marumakkathayees in Travancore.....fulfills all the conditions of a valid marriage and I do not myself see why it should not be recognised as valid marriage by the Courts. Unfortunately there exist doubts on the point and it is highly necessary that the legislature should step in and remove all doubts on an important point affecting the well-being of the Marumakkathayom community." Mr. Justice Govinda Pillai in his memorandum on the Malabar Marriage Bill, says "The High Court of Madras held that in the case of parties governed by Alyasanthanom law, adultery with the wife was no criminal offence .....Though the point has not been expressly decided under the Marumakkathayom law, the principle of the decision applies equally....." The addition of an explanation to Section 501 of the Penal Code Bill declaring that the existing social marriage among the followers of the Marumakkathayom law is a marriage contemplated in the section has led to some controversy. It is therefore manifestly undesirable to leave this important matter so vitally affecting the well-being and social progress of a great community to the mere chance of a possible judicial recognition.

In all civilized countries, customs, which possess the usual requisites, are recognized by the legislature. Custom is crystallised common sense. 'It is consensual law.' A large portion of the laws of all nations was, as observed by Browne "at one time in an amorphous form of heterogeneous custom.....all laws have been in practice before they were put in words.....The legislature is second in time to the executive, custom went before law, and indeed law is nothing but agreed—upon—usage."

According to Manu "immemorial usage is transcendent law;" and both this sage and Yagnavalkya lay down that it is the duty of the Ruler to ascertain, preserve, and give effect to the usages of districts and classes. The Judicial Committee in the Ramnad case ruled—"Under the Hindu system of law clear proof of usage will outweigh the written text of the law." "My own opinion is" observed Sir Fitz James Stephen "if a considerable body of men, bound together by common opinions and known by a common name, appeared to be in the habit of celebrating marriages according to forms and on terms unobjectionable in themselves, the Courts ought to recognize such marriages as valid." But, as I have endeavoured to point out, our Courts are not disposed to recognize our marriages. It thus becomes the duty of the legislature to give the custom the necessary legal sanction.

Having thus indicated the reasons that led to and that justify this Bill, I shall proceed to explain as briefly as I can its main provisions.

I may observe that the Bill entirely proceeds on the customary lines, in fact it simply embodies the existing custom and the only innovation is the provision of a simple procedure for effecting divorce. This latter provision is deemed necessary to make the existing marriage contract enforceable. Sir Muthuswamy Aiyer observes "It (i. e. the Malayalee marriage) is a contract of which the breach, though checked in some measure by public opinion, is neither invariably nor effectually restrained by a definite rule. Such a contract is a contradiction in terms and is not likely to be accepted as creating a binding tie until and unless the practice of divorce is regulated in some mode so that the obligation may invariably be taken to subsist until the regulation is complied with." This view, with all deference to the eminent Judge and Jurist, smells of the "too restricted conservatism" of Judges. A close study of the marriage laws of the various countries, ancient and modern, shows that permanence or duration for a specific or specified period is not of the essence of marriage; and no particular mode of severance is essential to the recognition of the binding character of the relation. Among the Hebrews and the Romans there was free divorce and there was no particular regulation prescribing the mode of divorce. Among several Mukkathayom classes in India (the Vellalars of Palanis, the Maravars, the Kallans, the Pallans &c.) who freely practise divorce, no particular rule or form of divorce is observed. Among the Mahomedans no interference of the Court or other public tribunal or authority is needed to effect divorce. Under the Sunni law the *talak* need not be pronounced by the husband himself or in the presence of witnesses. "As long as the repudiation comes to the knowledge of the wife, it is considered sufficient and valid in law."

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However, in view of the opinion expressed by so high an authority as Justice Muthuswamy Aiyer and of the undoubted advantage for evidential purposes of prescribing some mode of determining the marital contract, a provision has been introduced prescribing a simple procedure in respect of divorce. It appears that at a later period it became the practice with the Romans to send a written notice by means of a freed man who delivered it to the other party in the presence of seven witnesses. Among the Marumakkathayom Sudras of Nanjinad (South Travancore) a similar rule is observed. A declaration signed by the parties or one of them in the presence of a few respectable neighbours is exchanged as a preliminary to and evidence of divorce. The document is known as Vidu Muri. Thus even this provision is not altogether new, but is based upon a local custom.

In all other respects the Bill merely embodies the existing and well recognized usage. I may be permitted to add that the Bill has been drafted on the lines sketched out by the Madras Government in their letter to the Government of India already referred to. I would, with the Council's permission, read the following extracts from that letter. "Para 13.....His Excellency the Governor in Council is of opinion that a milder measure (i. e. than the one which was then before Government) which would respect and not oppose the customary social and family usages of the people concerned and which would merely graft thereon a marriage legally recognizable with a minimum of disturbance of customary observance would be acquiesced in by a majority and hailed with delight by a very considerable minority of those concerned.....

"The new act should, in the opinion of this Government, merely provide a machinery for securing contemporary and unimpeachable evidence of the fact of a customary marriage.....

"With reference to the subject (of divorce) His Excellency in Council considers that the Act should be of the least possible stringency. Divorce should be entirely free and no provision need be made for compensation to either party in any contingency. A notice or declaration in writing to be made before a District Munsif, or a Sub-Registrar, or a Magistrate and served as a summons on the other party should suffice for the object in view. The only restriction upon the facility of divorce which His Excellency in Council considers desirable is a provision to the effect that divorce shall not actually take place until six months after service of the aforesaid notice or declaration."

I may remark that the only material point on which the present Bill departs from the above sketch is in reference to the machinery for securing evidence of the transaction. Whatever the practice in Malabar, in this country the ceremony that usually accompanies the formation of the union affords sufficient and satisfactory evidence of the transaction. The idea of appearing before a Registrar or other public functionary is distasteful to the people. My learned colleague, the Rajah of Perpanad, who was one of the Commissioners, observed in his memorandum..... "There is difficulty in solemnising marriages in this way (i. e. before a Registrar). Our girls naturally very shy, will be reluctant to appear before the Marriage Registrar and sign the declaration." The idea of registration of marriage in any shape either at the time of marriage or at any future period is opposed to the sentiments of the natives. As observed by the President of the Malabar Commission, "I must here observe that no one that desires legislation needs a statutory form or has scruples about going through the customary form, and that the introduction of the former is liable to be misconstrued as casting a slur on the conventional usage and as treating a solemn event as a business matter." There are Makkathayee Sudras even in Travancore among whom divorce is legal; and there is no machinery for recording or preserving evidence of the fact of marriage among them. Throughout the continent of India among the various castes and sub-castes of the Hindus, marriages are performed according to their respective customs and no great practical difficulty appears to have arisen in proving the transaction in Courts of law.

I will not detain the Council further.

Section 2 of the Bill contains a declaration of the existing usage. The proviso is intended to guard against any possible misconception as to the legal incidents of a marriage under the section.

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Section 3 recognizes the existing right of divorce.

The first proviso provides the statutory 'regulation' the absence of which is considered a serious defect in our matrimonial contract. The object of prescribing a period is to afford the parties a *Locus Penitentiæ*—an opportunity of making up their differences. The skeleton in the house oftentimes creates serious disturbance, and time and intercession of friends smoothen matters. The Madras Government, it will be observed, suggested six months; Sir Muthuswamy Aiyer would prescribe one year. I have fixed 3 months in reference to local feelings on the subject and in order that the new law may involve the least disturbance of the 'customary observance.'

Sections 4, 5 and 6 detail the procedure to be followed in serving the notice. Para 2 of section 5 is intended to guard against any possible interference with popular sentiments.

Section 7 simply states the existing law and usage. No contract of any kind to which the parties are minors will be valid at law unless it is entered into by or with the consent of the legal guardians.

Section 8 is chiefly intended to guard against its being supposed that matters such as polygamy which are sanctioned by Hindu law, but which are opposed to western notions, are forbidden by the proposed Regulation.

I may mention that I do not bring forward this measure on my own responsibility. I have taken care to ascertain the feelings and wishes of as many of those whom the measure may affect as possible, and I may assure the Council that there is, so far as I have been able to ascertain, a consensus of opinion in favour of the Bill. I hold in my hand letters from some of the most prominent members of the Marumakkathayom community. As I have already consumed so much of your time I will not detain you by reading them all. But I would take the liberty of reading an extract or two from a few of them. The Valia Koil Tampuran c. s. 1 the consort of Her Highness the Senior Rani and the most prominent member of the aristocratic (Kshatriya) families in Travancore writes, "I have no objection to the passing of this Bill.....Our Rishis who were our legislators.....supposed marriage connotes inheritance. On the contrary I hold that there is no such inherent connection.....Seen through this general theory of marriage, the forms of it which obtain among those who follow the Marumakkathayom law do not exhibit a singular phenomenon as one would suppose....." After making a number of suggestions and pointing out what he considers to be defects in the Bill as drafted (these points will of course receive due consideration when the details of the Bill are discussed) he adds "It should not be supposed that I am opposed to the proposed Regulation. Far from it. Any measure calculated to raise the moral tone of the Malayalee society has my cordial support, and the present attempt, I am fully aware, is made with no other object than the moral elevation of our community."

The Kochukoil Tampuran, the consort of Her Highness the late lamented Junior Ranee, and the next leading member of the aristocratic Kshatriyas of Travancore, writes:—

"I have carefully gone through the Marumakkathayom Marriage Bill drafted by you. The necessity of such a measure cannot have failed to engage the attention of any sensible person interested in the honour and welfare of our community. I am sure no right thinking person will raise any objection to the principle of the measure and even viewing the draft in its technical legal aspects, the measure is simple, yet sufficiently comprehensive, so far as it goes, and free from any telling defect or flaw.

"It needs no saying that the vague notions of the marital relations among us, extant in some quarters, are exaggerated, highly coloured and often baseless. The present step will remove all such standing obloquy.

"Your Bill may perhaps appear to be a radical measure to some, but I view it simply as one giving the *existing* institution of marriage the recognition which, under the altered forms of law the times have brought into existence, it seems very much to need. All classes of the Marumakkathayom community must unanimously hail this provision as right and proper and in no wise premature or innovative. * * *

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"The notification of divorce through a constituted authority is at most only an inconvenience and it is certainly such to the aristocratic classes; but your sound practical common sense and respect for people's feelings have no doubt prompted the provision which altogether exempts females from attendance in Court; and with this exemption the residue of inconvenience is so slight, that the provision, pregnant as it is with beneficial results, ought to commend itself to the narrowest conservative. * * *

"You have wisely avoided intertwining the laws of marriage and inheritance and confined the legislation to the limits of present need. Legislative interference to the extent you have sketched has long been felt to be needed and more would be innovation and invasion into dangerous ground. I am glad to note that the rights of maintenance to wives and children are secured under the Bill.

"I must confess that to the Kshatriya and other classes among whom intermarriages are not allowed, the measure may appear to be fraught with dangers and inconveniences. I have coolly thought on the point but fail to see anything subversive of our usages, rights or substantial conveniences. The slight measure of inconvenience to a few which I fear may be occasioned at the outset, ought not to stand in the way of the public good and I, therefore, deliberately record my full sympathy with the measure on the lines proposed.

"The measure, though modest, is momentous and its passing will mark an epoch in the country's history. I must certainly congratulate you on being able to so draft it as not to collide with any fundamental Hindu principle or to alter tangibly any existing social institution. I wish your, or more truly, this national project the success it deserves."

M. R. Ry. Raja Raja Varma Avergal, of the Ennakat Raja family (which is allied to our Royal Family) writes:—

"I saw a printed copy of your draft Marumakkathayom Marriage Bill. Naturally you would expect some families to be opposed to such a measure, but I wish to convince you or any other who entertains such doubt of the contrary with the further view of strengthening your hands if my opinion can at all do it. I take the liberty of expressing my perfect sympathy and approval of the Bill. * * *"

M. R. Ry. M. Raja Raja Varma Avergal M. A., a cultured member of the Mavelikara Rajah's family, which is closely allied to our Royal Family, writes:—

"I gladly perused the draft Bill. I doubt not but it will commend itself to all... ...Though the Bill aims not at perfection, none can doubt that it is one step towards a further development. A measure might be very desirable, but if the people are not for it, it must fall through. Looking at the present stage of our society, as well as its rapid development, the proposed Regulation seems opportune ....." After some observations on the details of the Bill, he concludes "I have not the slightest hesitation in thinking that ..... it (the measure) is calculated to produce much benefit to our society."

M. R. Ry. A. Raja Raja Varma Avergal M. A., Principal of the Sanskrit College, nephew of the Valia Koil Tampuran and a very learned member of the Kshatriya aristocracy writes:—

" * * * There cannot be two opinions as to the urgent need of a Regulation like the one in contemplation.....One and all of us shall greet you as our champion and endeavour most heartily to strengthen your hands with whatever we can command.

"You have admirably simplified a grand question which, in any other hands, would have involved the most confounding and vexing complicacies. With regard to principle there is an evident objection that the Bill while it fetches no civil rights as one would wish for, brings on criminal liabilities which one would avoid. But this is the fault of the Marumakkathayom law as a whole and not of the Bill which simply professes to ameliorate the existing custom and secure it the sanction of the law. You have, therefore, wisely left untouched the question of inheritance and other civil rights which generally and unavoidably complicate a Marriage Bill."

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M. R. Ry. Sri Narayanan Thumby Avergal, son of H. H. the late Maha Rajah and the leading member of the Travancore Nair aristocracy writes;

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"In the interests of our community a measure like the one is highly required. By your wide experience and mature wisdom you have framed the Bill so very carefully and clearly that even the most conservative portion of the community cannot call it a Revolutionary measure.

* * * * * *

"I cordially approve of the general principles of the Bill. * * * * "

Mr. Justice Kunhi Ramen Nair writes "I have read with great interest the draft Regulation to declare the validity of marriages among the Marumakkathayom Hindus of Travancore. The proposal to affirm the validity as marriage of the existing conjugal union among the Maramakkathayees has my warmest approval and I believe the measure will commend itself to the Marumakkathayom community as a whole".

After some further observations relating to the details of the Bill, he says:—

"There is no valid reason whatever why the sexual connections so publicly formed as above described, and socially recognised as marriages should not receive legal recognition. I have for a long time observed amongst the educated and thinking portion of the Marumakkathayom community symptoms of a revolt against the present state of things which allows any one to commit adultery with another's wife with impunity, and it behoves the legislature and the State to remove the causes of dissatisfaction by affirming the validity of Marumakkathayom marriages. * * * "

Mr. Justice Govinda Pillai writes "I have to express my hearty concurrence with the principle of the proposed marriage Bill. It is a wellknown fact that the respectable portion of Marumakkathayees have always considered the conjugal union formed by Sambandham as sacred as marriage among Makkathayees. This opinion is at the present day being strengthened by education and the march of enlightenment. Approved good usage or Sadacharom was always a recognized source of Hindu law: all Marumakkathayees profess to follow this approved usage: but to make the practice of all conformable to their profession, legislation in this matter would be as salutary as in the case of the general Penal law. I think the proposed legislation will have a highly educative effect on public morals".

M. R. Ry. Moothukaruppa Pillai Avergal, Valia Melalutu Pillai, a prominent member of the Nanjinad Marumakkathayom community writes:—

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Legislation in this direction is highly necessary and has long been felt generally by the classes which the Bill comprises and especially by the educated portions thereof. I fully approve of the provisions of the Bill and expect that the same will be passed into a Regulation at no distant date."

M. R. Ry. Padmanabha Pillai Avergal, Melalutu Pillai, whose opinion may be taken to reflect that of the moderate conservative Nairs, writes:—

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The Bill is really a reform in the right direction. It does not in any way interfere with our civil rights, form of marriage &c., while by legislation a man's wife is confirmed as his wife and a woman's husband as her husband. At the same time a simple form of procedure is laid down in cases of divorce which is, as you know, seldom known in respectable and educated circles or even among poor people who are not subject to evil habits and associations.

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"Several respectable land-owners to whom I had occasion to speak about the proposal to introduce this Bill are unanimous in their opinion that the day on which this Bill of yours receives the sanction of Our Most Gracious, enlightened and kind Sovereign will be an epoch in the History of our dear Travancore.

"In fact some of them even suggested a public demonstration on that day. I have thus no doubt that you will have the sympathy of all well-wishers of Marumakkathayees, whether they follow Hinduism, Christianity or any other religion.

* * * "

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M. R. Ry. Madaven Thumby Avergal, of the Nagercoil Ammavidu, a prominent member of the Nair aristocracy, writes to this effect:—The proposed measure is an excellent one. It commands the approval of all. It is very difficult to simplify it further. The Bill does not seem to interfere in any way with the rights of any section of the community and I trust it will be unanimously passed by the Council.

I cannot resume my seat without publicly declaring that I have been advised, encouraged and prompted to undertake this task by our esteemed President who feels strongly that a regular law of marriage based on customary and national lines is essential to our social evolution. As a humble representative of the community which this measure mainly affects I offer our grateful acknowledgments to him. I have also received great assistance from the learned Chief Justice in drafting this Bill and his sympathy and promised support have not a little encouraged me to take up this work. I am confident that the Council will with full and genuine sympathy accord its cordial support to this humble attempt to elevate and ennoble the existing system of marriage among Marumakkathayees into a legal institution and thereby give the members of this great and ancient community the protection which all other classes of His Highness the Maha Rajah's subjects enjoy.

Mr. Ramanatha Rao.—I beg to second the motion.

Mr. Rama Vurma.—I have to make a few observations on the Bill. I see the President and the Chief Justice have already expressed their views to the mover. I beg pardon for saying so, but I think they should have waited till the measure is actually brought under discussion. Let me nevertheless, express what I feel in the matter.

From the day the Madras High Court clearly expressed its opinion that the Sambandhoms among the Marumakkathayom Hindus are no marriages in the generally accepted sense of the term, the Malayalees have been placed, they feel, in a very awkward position. They have been for the first time made to understand that their Sambandhoms would not be recognized by Courts of law as legal marriages. The decision of the Madras High Court was a shock to the Malayalees. It made them keenly feel the want of a marriage law. In order to supply this much felt want my friend, Mr. Thanu Pillai, now asks for leave to introduce this Bill. Though I am strongly for a Marriage Regulation for the Malayalees I feel it my duty, much against my inclination, to say a few words against the Bill on its present lines. My first objection to it is that it will have the effect of legalizing polygamy and polyandry. I seriously doubt the wisdom of legalizing these in this last decade of the nineteenth century. My next objection is that it leaves out the question of inheritance. I am not aware of any marriage law in the civilized world not dealing with this question. My third objection is that it includes within its scope classes who have a personal law of marriage.

Mr. Prince.—I have much pleasure in supporting Mr. Thanu Pillai's motion. I think the Legislature should not refuse the leave asked for. I have been living here these 22 years and know more or less intimately the ways of the community affected by this measure. I have not the least hesitation in saying that the proposed law is very necessary, calculated to elevate the classes for whose permanent and substantial good it is intended.

Mr. Krishnaswamy Rao.—

Mr. Thanu Pillai was quite right in consulting some of the members of the Council in drafting the Bill as it relates to a most important social subject. There is no breach of any rule or usage in members consulting one another before drafting a Bill.

I see no objection to the principles of this Bill. I fully subscribe to the proposition that social reforms should be the outcome of the national will. But the necessity for legislation in such matters arises from the reluctance of the Courts to take notice of any social change not recognized by law. No social legislation should be undertaken unless it is clear that the community to which the proposed law is intended to apply or a respectable portion of it desires the interference of the legislature. During the last 12 years, I had ample opportunity of knowing that the educated section of the Marumakkathayom community eagerly long for legislation on the subject of their conjugal unions. In 1887, the late lamented Mr. Justice

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Narayana Pillai showed me a draft Bill and asked me whether the Malayalee Sabha may apply to His Highness' Government to pass it into law. I advised him to wait until the result of the efforts of the members of his community residing in British India in the same direction, is known. The Madras Legislative Council have recently passed a Bill on the subject which is about to become law. The Bill before us, differs materially from the Madras Act. But I think that this Bill is likely to meet with the approval of all sections of the Marumakkathayom community as it does not disturb the existing rights. This measure will remove the reproach that there is no legally recognized marriage among Malayalees and confer a legal status on their conjugal unions in so far as the administration of Criminal law is concerned.

Mr. Rama Vurma.—As so many have expressed themselves in favour of the measure I do not oppose the motion. My objections may be dealt with in the Select Committee and the learned mover, I am sure, will be able to satisfy me on the points raised by providing the necessary safeguards.

Leave having been granted, Mr. Thanu Pillai introduced the Bill and moved that the principle of the Bill be discussed at once.

He said.—I beg the President may be pleased to suspend the rules in view to the discussion of the principle of the Bill being proceeded with at once. We have often dealt with Bills in this manner and I see no objection to the course being followed in the present instance. If the principle be affirmed, the Bill may be referred to a Select Committee and published in the Gazette giving the public ample time to express their views especially as to details which of course can be considered in the Select Committee and in the Council later on. As for the principle, I would draw attention to the fact that the draft Bill has already been circulated among the members and in regard to the public the question has been engaging their earnest attention for nearly a year though in a different connection—I mean in connection with the explanation attached to section 501 of the Penal Code Bill. The principle involved is mainly the same. For the sake of greater convenience, symmetry and definiteness, an independent enactment in the present form has been adopted. I need hardly say what views have been expressed on this explanation. I am quite sanguine that the present measure will evoke nothing but the heartiest sympathy from every one for whose opinion we need care.

Mr. Prince.—That there should be a law of the kind explained by Mr. Thanu Pillai has been agreed to. There hardly remains anything more for the consideration of the Council by way of discussion of the *principle*. Again I may add that the Penal Code Bill which has to be taken up presently contains certain provisions which hinge upon the circumstance whether the proposed Regulation is to become law or not. I fully agree with Mr. Thanu Pillai in thinking that the principle of the Bill should be discussed at once.

President.—I agree with Mr. Thanu Pillai. The principle is virtually the same as that involved in the new explanation under section 501 of the draft Penal Code. The Bill presents the provision in a different and more complete form.

The President then suspended the rules and after a short discussion the principle was affirmed.

During the discussion Mr. Kuruvila said.—Lest my suggestion that nothing could be gained by taking it up at once should be viewed as even remotely indicating any want of sympathy on my part, I rise first to express my sincere gratification at the near prospect of the Bill becoming law. It is of vital importance to the community concerned and does not materially affect the customary observances. I fully support the measure.

Mr. Ramanatha Rao also observed.—In suggesting the advisability of deferring the discussion my only object was to see what reception the people would be prepared to give to the measure, affecting as it does an important section of the community. Individually it gives me the greatest pleasure to express my full approval of the measure brought forward by my learned friend.

Mr. Bensley.—I must congratulate Mr. Thanu Pillai that he has been able to introduce such an important and beneficial measure. I wish him all success.

The other members also expressed their approval of the principle of the Bill.

Mr. Thanu Pillai.—I beg first to thank the Council for having so unanimously affirmed the principle of the Bill. I would now move that the Bill be referred to a

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Select Committee composed of Messrs. Krishnaswamy Rao, Rama Vurma, Kuruvila and the mover and that it be published in the Gazette.

Seconded by Mr. Nagam Aiya.

Carried.

THE LEGISLATIVE COUNCIL REGULATION AMENDMENT BILL.

Mr. Krishnaswamy Rao.—

I beg leave to introduce a Bill for the amendment of Regulation II of 1063 which now regulates the constitution of this Council. The chief defect in the present law is that it does not define the powers of the Council. Owing to the peculiar political conditions of this State, it is not possible for the local legislature to enact laws affecting several matters coming within the sphere of the imperial policy of the paramount power, such as customs and salt duties, treatment of European vagrants, extradition of criminals, Sea ports, British Post office and Telegraphs and the like. To remove the doubts which may arise as to the legality of the orders of the executive in relation to such matters, it is necessary to exclude them from the jurisdiction of the Council. The main object of this Bill is to define the powers of the Council.

I have taken this opportunity to introduce some other amendments suggested by the Indian Councils Act of 1892 which regulates the constitution of the Legislative Councils in India. Travancore does not differ materially from British India in point of education, intelligence and civilization of its inhabitants. The success which the Act of 1892 has achieved in British India warrants the adoption of some system of election here in the nomination of all or a few of the non-official members.

The maximum strength of the Council now is 9 members including the President. An increase in the number of councillors may secure a better representation of all interests in the country. The Legislative Council of Ceylon consists of 15 members exclusive of the Governor, the Viceregal Council 21, and the Provincial Councils of Bombay and Madras 24 each. Travancore is very nearly equal to Ceylon in area and population. I think that a Council of 15 members for Travancore will not be unwieldy.

The Bill which I seek to introduce is sketched on the main lines above indicated. I need not take up the time of the Council by an exposition of the other matters dealt with in the Bill as they do not materially differ from the existing law.

Seconded by Mr. Thanu Pillai.

Carried.

Leave having been granted he introduced the Bill and moved that the Bill with statement of Objects and Reasons be published in the Gazette.

Seconded by Mr. Prince.

Carried.

PENAL CODE BILL.

Mr. Krishnaswamy Rao.—

I beg that the Penal Code Bill as amended by the Select Committee be taken into consideration. It was published in the Travancore Gazette of the 10th March last. I think that it has been sufficiently long before the public. It is very gratifying to note that this Bill has been more carefully studied by the public and the press than any other legislative measure introduced into this Council. The thanks of the Council are due to the gentlemen who have favoured us with their criticisms and suggestions. They will be glad to find that some of their suggestions have been adopted by the Council. I intend to make a few general observations on some of the important criticisms and suggestions.

Exception is taken to section 85 of the Bill on the ground that it is superfluous. It may be that no sensible Magistrate will punish a schoolmaster for correcting a pupil by the application of the cane in the usual way. But we should not forget that the absence of a clear provision on the point often misleads the pupil or his advisers into the erroneous belief that a prosecution for assault will be successful.

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